

DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of
LIBERTY PRODUCTIONS,
A LIMITED PARTNERSHIP

Et. Al.

For Construction Permit for
New FM Channel 243A
Biltmore Forest, North Carolina

To: The Commission

) MM Docket No. 88-577
)
) File No. BPH-870831MI
)
)
)

RECEIVED

JAN 10 2000

FCC MAIL ROOM

CONSOLIDATED OPPOSITION TO
MOTIONS TO STRIKE

Liberty Productions, a Limited Partnership ("Liberty") by counsel herewith submits its consolidated opposition to the Motion to Strike filed by Orion Communications Limited ("Orion") on December 29, 1999 and the Motion to Strike filed by Willsyr Communications Limited Partnership ("Willsyr") on January 3, 2000 in the above referenced proceeding. In support whereof the following is shown:

1. Orion moves to strike the "Reply to Opposition to Amendment" filed by Liberty on November 10, 1999, on the theory that it is subject to, but not authorized by 47 CFR 1.294(d). Orion's Motion is without merit and must be denied for two reasons.

No. of Copies rec'd 0 + 6
List A B C D E

2. Initially, Section 1.294 of the Commission's Rules is not applicable to the filing of amendments as of right. By its explicit terms, Section 1.294 applies to "interlocutory requests" filed in hearing proceedings. The submission of an amendment as of right, pursuant to Section 73.5005 of the Commission's Rules, is not an 'interlocutory request' within the meaning of 47 CFR 1.294, and, thus, that section of the Rules neither authorizes the filing of oppositions to the filing of amendments as of right, nor prohibits the submission of responsive pleadings to any such opposition as may be filed to such amendments. 1/

3. Secondly, Section 1.294(a) is applicable here, if at all, to Orion's "Opposition to Amendment." Although the Commission's Rules do not specifically authorize the filing of oppositions to amendments filed as of right, the filing of such an opposition in a hearing proceeding clearly would constitute an 'interlocutory request' within the meaning of 47 CFR 1.294(a). Under such circumstances, Orion's "Opposition" constituted an 'interlocutory request' pursuant to 1.294(a), giving rise to Liberty's right to submit a responsive pleading in opposition. Thus, regardless of how the pleadings were styled, Orion's "Opposition" was in fact an initial, interlocutory request and

1. While petitions for leave to amend do constitute 'interlocutory requests' and are subject to 47 CFR 1.294, Liberty's neither submitted nor was required to submit a petition for leave to amend, inasmuch as its amendment was submitted as of right, pursuant to Public Notice (DA 99-2153), released October 12, 1999 and Section 73.5005 of the Commission's Rules.

Liberty's "Reply" was a responsive pleading, filed in opposition to an interlocutory request. Thus, if Section 1.294 is applicable, here, it specifically authorizes precisely the type of responsive pleading filed by Liberty in this instance.

4. Willsyr moves to strike the "Reply to Opposition to Amendment" filed by Liberty on December 3, 1999, on precisely the same basis as Orion, i.e., that Liberty's "Reply" to Willsyr's "Opposition to Amendment" was prohibited by 47 CFR 1.294(d). Thus, Willsyr's Motion must be denied for precisely the same reason as that of Orion. See. paras. 1-2, supra.

5. The balance of Orion's "Motion to Strike" in fact constitutes a further response to Liberty "Reply to Opposition to Amendment". It is bad enough that, having filed an unauthorized opposition to Liberty's amendment, Willsyr now advances the claim that Liberty's "reliability in complying with Commission Rules" and "trustworthiness to be a licensee" are at issue on the theory that it violated the Rules by filing a responsive pleading in opposition to Willsyr's interlocutory request. What is truly incredible, however, is the fact that Willsyr seeks by its Motion to Strike to submit arguments responsive to Liberty's "Reply", in clear violation of precisely the same Rule it claims (erroneously) that Liberty is guilty of violating. In any event the balance of Willsyr's "Motion to Strike" has nothing to do with its current interlocutory request and, accordingly, should be ignored.

WHEREFORE, premises considered, the Motions to Strike filed by Orion and Willsry should be DENIED.

Respectfully Submitted

LIBERTY PRODUCTIONS,
A LIMITED PARTNERSHIP

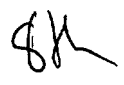
By: 

Timothy K. Brady
Its Attorney

P.O. Box 71309
Newnan, GA 30271-1309
770-252-2620

January 10, 2000

CERTIFICATE OF SERVICE

I, Timothy K. Brady, hereby certify that I have this  day of January, 2000, served a copy of the foregoing Consolidated Opposition to Motions to Strike by First Class mail, postage prepaid upon the following:

John Riffer, Esq.
Associate General Counsel
FCC
445 12th Street, SW
Washington, DC 20554

James W. Shook, Esq.
Enforcement Bureau
FCC 445 12th Street, SW
Washington, DC 20554

Donald J. Evans, Esq.
Donelan, Cleary, et. al.
1100 New York Avenue, N.W. Suite 750
Washington, D.C. 20005-3934
(Counsel for Biltmore Forest
Broadcasting FM, Inc.)

Stephen T. Yelverton, Esq.
601 Thirteenth Street, NW
Suite 500 North
Washington, DC 20005
(Counsel for Willsyr Communications
Limited Partnership)

Robert A. DePont, Esq.
P.O. Box 386
Annapolis, MD 21404
(Counsel for Skyland Broadcasting Co.)

Lee J. Peltzman, Esq.
Shainis and Peltzman
1901 L Street, NW, Suite 290
Washington, DC 20036
(Counsel for Orion Communications Limited)


Timothy K. Brady